IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1146 of 2007

V.Vijayakumar .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. The District Collector and
   District Magistrate
   Villupuram District
   Villupuram. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.P.Vajiravelu
For Respondents: Mr.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, who has been clamped with an order of detention dated 1.3.2007 under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda and confined at Central Prison, Cuddalore, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention in Ref.No.C2/9106/2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. On the basis of a complaint lodged by one Ramesh that on 12.2.2007 at about 7.00 pm, the detenu along with three associates,

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threatened him at the knife point and forcibly took Rs.1200/- from his pant pocket and one of his associate took Nokia mobile phone from his shirt pocket, and also threatened the public, who came to the scene of occurrence, that they would kill them, the detenu was arrested and a case was registered in Crime No.57/2007 on the file of Inspector of Police, Kachirpalayam Police Station, for the offence punishable under Sections 392 read with 397, IPC.

3. The second respondent, taking note of the above case as a ground case and finding that there is one adverse case in crime No.78/2007 on the file of Chinnasalem Police Station for the offence under Section 392, IPC with regard to an occurrence taken place on 11.2.2007, ordered his detention dubbing as a Goonda.

4. The learned counsel for the petitioner, inviting our attention to para 5 of the grounds of detention wherein it is stated that the detenu was in remand in connection with the ground case, contends that there is no valid remand on the date of passing of the impugned order of detention and therefore, the order of detention is vitiated on the ground of non application of mind on the part of the detaining authority.

5. We have perused the entire materials placed before us. A perusal of the same makes it clear that the detaining authority had stated that the detenu is in remand in connection with the ground case. However, in the request for remand found at page No.88 of the booklet, it is stated by the learned Judicial Magistrate, Kallakurichi that on 27.2.2007, "the accused not produced, to be produced on 13.3.2007". Therefore, it is clear that on the date of passing of the order of detention, the detenu was not in valid remand. The above discrepancy, which went unnoticed by the detaining authority while passing the order of detention, reflects his non application of mind.

6. We are, therefore, satisfied that the impugned order of detention is vitiated on the ground of non application of mind on the part of detaining authority. Hence, the order of detention is quashed. The habeas corpus petition is allowed. The detenu is directed to be released forthwith, unless he is required in connection with any other case.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Collector and
   District Magistrate
   Villupuram District
   Villupuram.

3. The Superintendent
   Central Prison, Cuddalore.

4. The Joint Secretary to Government,
   Public[Law and Order] Department,
   Fort St. George, Chennai 9.

5. The Public Prosecutor
   High Court, Madras.

+ 1 CC To Mr. P.Vajravelu, Advocate SR NO.67246

HCP No.1146 of 2007.

vsv[co]
gp/29.11.

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